John H. Platt (#019950)
SNELL & WILMER L.L.P.
One Arizona Center
400 E. Van Buren
Phoenix, AZ 85004-2202
Telephone: 602-382-6334
Facsimile: (602) 382-6070
E-mail: jhplatt@swlaw.com
Attorney for Plaintiff

Snell & Wilmer
L.L.P.
LAW OFFICES
One Arizona Center, 400 E. Van Buren
Phoenix, Arizona 85004-2202
(602) 382-6000

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Dependable Staffing Services, L.L.C., an Arizona limited liability company, Plaintiff, v. Dependable Staffing Services, Inc., a California corporation; Kelley Smith, an individual; Nursing Registry Consultants Corporation, an Arizona corporation d/b/a NursingCorp; and Joseph Caracci, an individual, Defendants.	No. COMPLAINT (FEDERAL TRADEMARK INFRINGEMENT, UNFAIR COMPETITION, CYBERPIRACY) (JURY TRIAL DEMANDED)

Plaintiff Dependable Staffing Services, L.L.C. ("Plaintiff"), for its Complaint against defendants Dependable Staffing Services, Inc. ("DSSI"), Kelley Smith ("Smith"), Nursing Registry Consultants Corporation ("NursingCorp") and Joseph Caracci ("Caracci") (sometimes referred to collectively herein as "Defendants"), alleges as follows:

PARTIES AND JURISDICTION

1. Plaintiff is an Arizona limited liability company having a principal place of business in Phoenix, Arizona.

2. Upon information and belief, defendant Dependable Staffing Services, Inc.

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is a California corporation with its principal place of business in Newport Beach, California.

3. Upon information and belief, defendant Kelley Smith is a resident of California.

4. Upon information and belief, defendant Nursing Registry Consultants Corporation is an Arizona corporation with its principal place of business in Chandler, Arizona.

5. Upon information and belief, defendant Joseph Caracci is a resident of Arizona.

6. This is an action to recover damages and for injunctive relief arising under the trademark laws of the United States and the related laws of the State of Arizona, with this Court having jurisdiction of the subject matter for each of the following claims:

a. Trademark infringement in violation of the Lanham Act, 15 U.S.C. § 1114(1), with jurisdiction vested in this Court by virtue of 15 U.S.C. § 1121, 28 U.S.C. § 1331, and 28 U.S.C. § 1338(a).

b. Unfair competition in violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), with jurisdiction vested in this Court by virtue of 15 U.S.C. § 1121, 28 U.S.C. § 1331, and 28 U.S.C. § 1338(a).

c. Violation of the Anti-Cybersquatting Consumer Protection Act, § 43(d) of the Lanham Act, 15 U.S.C. § 1125(d), with jurisdiction vested in this Court by virtue of 15 U.S.C. § 1121, 28 U.S.C. § 1331, and 28 U.S.C. § 1338(a).

d. Common law trademark infringement, with supplemental jurisdiction vested in this Court by 28 U.S.C. § 1338(b) and 28 U.S.C. § 1367.

e. Common law unfair competition, with supplemental jurisdiction vested in this Court by 28 U.S.C. § 1338(b) and 28 U.S.C. § 1367.

7. This Court has personal jurisdiction over Defendants by virtue of their conduct and business activities in Arizona, as well as their intentional actions expressly aimed at Plaintiff in Arizona, which Defendants know to cause harm to Plaintiff in

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LAW OFFICES
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Arizona. Plaintiff's claims herein arise out of or are related to that conduct and those actions, and the exercise of personal jurisdiction over Defendants by this court is reasonable.

8. Venue is proper in the District of Arizona pursuant to 28 U.S.C. § 1391(b)(2), because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District.

NATURE OF THE DISPUTE

9. The individual Defendants and the respective corporate Defendants, which upon information and belief are owned, operated, and/or controlled by the individual Defendants, are infringing the valuable trademark rights of Plaintiff. Defendants are cyberpirates who have registered and are using Internet domain names that infringe Plaintiff's federally-registered DEPENDABLE STAFFING trademark. By this action, Plaintiff seeks (1) to enjoin Defendants' wrongful and infringing conduct, which is causing irreparable harm to Plaintiff; (2) transfer of ownership of the domain names to Plaintiff; and (3) to collect damages resulting from Defendants' willful and intentional conduct.

BACKGROUND

10. Dependable Staffing Services, L.L.C. was established in 1996. It is an Arizona corporation which provides staffing services for hospitals and clinics throughout the United States. Dependable Staffing Services recruits nurses and other health care professionals and fulfills employment and staffing requests for such health care professionals from various hospitals and clinics across the country.

11. Applications for employment by health care professionals and requests for staffing by hospitals are coordinated through Dependable Staffing Services' website <http://www.dependablestaffing.com>. The site features a secure, online application that can be accessed and completed over the Internet. This allows Dependable Staffing Services to meet the needs of clientele across the country from its headquarters in Phoenix, Arizona.

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12. Dependable Staffing Services, L.L.C. filed for federal registration of the mark DEPENDABLE STAFFING on January 10, 2005. The mark was registered on September 16, 2006, as U.S. Service Mark Registration No. 3,141,276 for use in connection with "employment hiring, recruiting, placement, staffing and career networking services." The mark has been in use continuously in commerce since at least as early as May 1, 1996.

13. Plaintiff recently became aware that Defendants DSSI and Smith were using the company name "Dependable Staffing Services" and engaging in online advertising of employment services for health care professionals and staffing services for hospitals and clinics.

14. Plaintiff became aware that Defendants DSSI and Smith registered and established a commercial website accessible via the domain name <dependablestaffingservices.net> ("the First Infringing Domain Name").

15. Defendant Smith is listed as the registrant of the First Infringing Domain Name, as shown in Exhibit A.

16. The website accessible via the First Infringing Domain Name featured the company name "Dependable Staffing Services," and advertised medical professional staffing services. The site also featured a web-based employment application similar to the application on Plaintiff's website.

17. On July 11th, 2008, Plaintiff sent a cease and desist letter to Defendants DSSI and Smith. The letter explained that DEPENDABLE STAFFING was Plaintiff's federally-registered trademark, and that the unauthorized use of the company designation "Dependable Staffing Services" constituted trademark infringement. Plaintiff also gave Defendants DSSI and Smith notice that the First Infringing Domain Name infringed the DEPENDABLE STAFFING mark and violated the Anti-Cybersquatting Consumer Protection Act. The letter further gave notice to Defendants that if they did not cease their infringing use of the DEPENDABLE STAFFING mark, Plaintiff would file suit to enforce its intellectual property rights.

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18. After receiving Plaintiff’s cease and desist letter, Defendant advised Plaintiff’s counsel there was some business relationship between Defendants DSSI and Smith and Defendants NursingCorp and Caracci.

19. Upon information and belief, Defendants NursingCorp and Caracci are parties to a business relationship with Defendants DSSI and Smith, whereby NursingCorp and Caracci have assisted and continue to assist Defendants DSSI and Smith in the organization and operation of a medical professional staffing company.

20. Upon information and belief Defendants DSSI and Smith stopped using the website at the First Infringing Domain Name and re-established their website accessible via the domain name <dependablestaffingservice.net> (“the Second Infringing Domain Name”). The First Infringing Domain Name and the Second Infringing Domain Name are collectively referred to as “the Infringing Domain Names”.

21. Defendant Caracci is listed as the registrant of the Second Infringing Domain Name, as shown in Exhibit B.

22. The content of the Second Infringing Domain Name is substantially the same as that of the First Infringing Domain Name.

23. Defendants continue to use the DEPENDABLE STAFFING mark in commerce, both as a company name and in the context of the Second Infringing Domain Name.

24. As a result of Defendants’ failure to terminate the infringing uses of the DEPENDABLE STAFFING mark, Plaintiff filed this action for relief.

CLAIMS FOR RELIEF

COUNT ONE

TRADEMARK INFRINGEMENT UNDER THE LANHAM ACT, 15 U.S.C. § 1114(1)

18. Plaintiff incorporates by reference the preceding allegations of this Complaint.

19. Defendants’ use in commerce, without consent, of a confusingly similar reproduction of Plaintiff’s federally-registered DEPENDABLE STAFFING mark, and

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Defendants' applying such reproduction to the pages of the Infringing Domain Names websites, in connection with the sale, offering for sale, or advertising of Defendants' services is likely to cause confusion or to deceive the consuming public.

20. Defendants' actions violate 15 U.S.C. § 1114(1). As a direct consequence of Defendants' actions, Plaintiff has been damaged in an amount at this time not totally ascertainable, and will continue to suffer irreparable injury to the goodwill of Plaintiff's federally-registered mark, its rights, and its business, unless and until the Defendants are restrained from continuing their wrongful acts.

COUNT TWO

UNFAIR COMPETITION UNDER § 43(a) OF THE LANHAM ACT, 15 U.S.C. § 1125(a)

21. Plaintiff incorporates by reference the preceding allegations of this Complaint.

22. Defendants' registration and use of the Infringing Domain Names and designations that are identical and/or confusingly similar to Plaintiff's mark without Plaintiff's consent is likely to cause confusion or mistake or have deceived customers as to an affiliation, connection, or association between Defendants' "Dependable Staffing Services" and Plaintiff's "Dependable Staffing Services, LLC" trade name and federally-registered DEPENDABLE STAFFING mark.

23. Defendants have engaged in this false designation of origin and false description and representation of its products and services in interstate commerce in an effort to willfully, maliciously, intentionally, and unfairly compete with Plaintiff and Plaintiff's DEPENDABLE STAFFING mark and such actions constitute unfair competition.

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COUNT THREE

FEDERAL CYBERPIRACY; VIOLATION OF § 43(d) OF THE LANHAM ACT, THE ANTI-CYBERSQUATING PROTECTION ACT, 15 U.S.C. § 1125(d)

24. Plaintiff incorporates by reference the preceding allegations of this Complaint.

25. Defendants' registration and use of the Infringing Domain Names and designations that are identical and/or confusingly similar to Plaintiff's DEPENDABLE STAFFING mark without Plaintiff's permission is likely to cause confusion, mistake and deception as to the origin, sponsorship, or approval of Defendants' services and to dilute the distinctive quality of Plaintiff's DEPENDABLE STAFFING mark in violation of Section 43(d) of the Lanham Act (15 U.S.C. § 1125(d)).

26. Plaintiff's DEPENDABLE STAFFING mark was distinctive at the time Defendants registered the Infringing Domain Names.

27. Defendants' actions violate 15 U.S.C. § 1125(d). As a direct consequence of Defendants' acts, Plaintiff has been damaged in an amount at this time not totally ascertainable, and will continue to suffer irreparable injury to the goodwill of Plaintiff's DEPENDABLE STAFFING mark, its rights, and its business, unless and until the Defendants are restrained from continuing their wrongful acts.

COUNT FOUR

TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION UNDER ARIZONA COMMON LAW

28. Plaintiff incorporates by reference the preceding allegations of this Complaint.

29. As set forth more fully above, Plaintiff's DEPENDABLE STAFFING mark is indicative of origin, relationship, and association with Plaintiff.

30. Plaintiff's DEPENDABLE STAFFING mark is widely recognized in the industry and by the public as indicating the source of Plaintiff's services.

31. Defendants began use of the DEPENDABLE STAFFING mark subsequent

Snell & Wilmer
L.L.P.
LAW OFFICES
One Arizona Center, 400 E. Van Buren
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(602) 382-6000

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L.L.P.
LAW OFFICES
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(602) 382-6000

to Plaintiff's use of the DEPENDABLE STAFFING mark.

32. Defendants' use of the DEPENDABLE STAFFING mark in connection with their services creates a likelihood of confusion or deception of the consuming public as to the source of the services provided by Defendants, and creates a false impression of an affiliation or endorsement by or other connection with Defendants.

33. Defendants' actions described above violate Plaintiff's common law trademark rights and constitute trademark infringement and unfair competition.

34. Defendants committed these acts of trademark infringement and unfair competition fraudulently and maliciously and in conscious disregard of Plaintiff's rights, with intent to injure Plaintiff.

35. As a direct and proximate consequence of Defendants' actions, Plaintiff has suffered irreparable injury. Such harm will continue and increase unless Defendants are preliminarily and permanently enjoined from their unlawful conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands a trial by jury and judgment in favor of Plaintiff against Defendants for the following:

I. A preliminary and permanent injunction restraining Defendants, their agents, servants, employees, attorneys and those persons in active concert or participation with them:

A. From using Plaintiff's DEPENDABLE STAFFING mark, the Infringing Domain Names, or any mark, name, or domain name similar thereto in connection with any authorized goods or services in the United States;

B. From using any logo, trade name, service mark or trademark which may be calculated to falsely represent or which has the effect of falsely representing that the services and/or products of Defendants are sponsored by, authorized by, or in any way associated with Plaintiff;

C. From otherwise unfairly competing with Plaintiff;

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II. An order requiring the forfeiture or cancellation of the Defendants' <http://www.dependablestaffingservices.net> and <http://www.dependablestaffingservice.net> domain name registrations.

III. That Plaintiff be awarded Defendants' profits and Plaintiff's actual damages resulting from Defendants' trademark infringement, unfair competition, and cybersquatting, and that such damages be trebled, pursuant to 15 U.S.C. § 1117(a).

IV. That Plaintiff be awarded statutory damages of $100,000 per infringing domain name pursuant to 15 U.S.C. § 1117(d), for a total of $200,000.

V. That Plaintiff be awarded punitive damages for Defendants' wrongful acts of unfair competition.

VI. That Plaintiff be awarded a recovery from Defendants of the cost of this action and Plaintiff's reasonable attorneys' fees, as provided for under 15 U.S.C. § 1116(a).

VII. That Plaintiff be awarded all other and further relief as the Court may deem just and proper under the circumstances.

DATED this 10th day of October, 2008.

SNELL & WILMER L.L.P.

By */s/ John H. Platt*

John H. Platt
One Arizona Center
400 E. Van Buren
Phoenix, AZ 85004-2202
Attorney for Plaintiff Dependable Staffing Services, L.L.C.